

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PAUL BOGLE,)
)
Plaintiff,)
) Civil Action File No.
vs.) No.: _____.
)
WALMART STORES EAST, LP)
and JOHN DOE No. 1 and JOHN)
DOE No. 2;)
)
Defendants.)

NOTICE OF REMOVAL

COME NOW WAL-MART STORES EAST, LP, a named Defendant in the above-captioned matter, by and through its counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendant WAL-MART STORES EAST, LP in the State Court of Gwinnett County, Georgia, which is within the Atlanta Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 23-C-05602-S1. (See generally Complaint, a true and correct copy of which is included in attached **Exhibit “A”**).

Plaintiff's claims against Defendant include claims of negligence. (See generally Exhibit A).

2.

Plaintiff first filed suit in the State Court of Gwinnett County, Georgia, on August 7, 2023 - hereinafter referred to as the "Gwinnett County Suit". (See generally Exhibit A)

3.

Defendant WAL-MART STORES EAST, LP was served with a copy of the Summons and Complaint in the Gwinnett County Suit on Aigsit 9, 2023. (See Proof of Service, a true and correct copy of which is attached hereto as **Exhibit "B"**).
Defendant WAL-MART STORES EAST, LP has filed this notice of Removal within thirty (30) days of service in the Gwinnett County Suit.

4.

Defendant WAL-MART STORES EAST, LP is a Delaware limited partnership, of which WSE Management, LLC is the only general partner, and WSE Investment, LLC is the only limited partner. The sole member of WSE Management, LLC and of WSE Investment, LLC is Wal-Mart Stores East, LLC, and the sole member of Wal-Mart Stores East, LLC is WALMART INC. WALMART INC. is a Delaware corporation with its principal place of business in the State of Arkansas,

and it was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of this lawsuit or at any time thereafter. The principal place of business for all entities mentioned in this paragraph is 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas 72201. (See Exhibit A, ¶ 2; See also Georgia Secretary of State and Delaware Secretary of State documents, true and correct copies of which are attached hereto collectively as **Exhibit “C”**).

5.

Plaintiff's Complaint also asserts claims against two fictitious defendants, "JOHN DOE NO. 1" and "JOHN DOE NO. 2." (See Exhibit A, ¶¶ 4, 5). While Plaintiff's Complaint includes allegations against said John Doe Defendants, neither John Doe Defendant has been identified and, therefore, there is no competent evidence of the citizenship of the fictitious defendants. Pursuant to 28 U.S.C. §1441(b), the alleged citizenship of the fictitious John Doe defendants is to be disregarded for purposes of determining federal jurisdiction under 28 U.S.C. §1441(a).

6.

Plaintiff PAUL BOGEL has alleged that he is a citizen of the State of Georgia. (See Exhibit A, ¶ 1).

7.

Complete diversity of citizenship exists between Plaintiff and Defendant.

8.

Plaintiff claims personal injury from a slip-and-fall incident. While Plaintiff's Complaint is silent as to the amount in controversy, a pre-suit demand for \$1,000,000, sent by Plaintiff's counsel to Defendant on October 7, 2022, specifically indicated that Plaintiff's medical expenses totaled no less than \$82,353.02. (See copy of October 7, 2022 Demand, a true and correct copy of which is attached hereto as **Exhibit "D"**). Plaintiff's Complaint generally indicates that Plaintiff has suffered bodily injury, pain and suffering, mental anguish, loss of enjoyment of life, medical treatment, medical expenses, and loss of income and that Plaintiff is entitled to compensation for actual, general and punitive damages as determined by the enlightened conscience of an impartial jury. (See Exhibit A, ¶¶ 11, 15-18, 20-29; see also Exhibit D).

9.

Taken together, the information contained in Plaintiff's October 7, 2022 Demand and Plaintiff's Complaint makes it plausible that the amount in controversy, exclusive of interest and costs, in the subject suit exceeds the jurisdictional threshold of \$75,000. See Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 81-82,

135 S. Ct. 547, 553, 554 (2014) (pursuant to 28 U.S.C. §1446(a), a defendant's Notice of Removal "need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.").

10.

This action is removable pursuant to 28 U.S.C. §§ 1332 and 1441, based on complete diversity of citizenship between Plaintiff and Defendant and this Defendant having timely removed this case pursuant to 28 U.S.C. § 1446(b)(1).

11.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1332(a) and 1441 because, as demonstrated in the foregoing, complete diversity exists between the only proper parties to this suit and Defendant has shown by a preponderance of the evidence that it is plausible that the amount in controversy exceeds \$75,000.00.

12.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendants have attached as **Exhibit "E"** true and accurate copies of all the pleadings that were provided to and served upon Defendant, including copies of all pleadings that have been filed to date in the State Court of Gwinnett County, Georgia for the above-styled case.

13.

Pursuant to 28 U.S.C. § 1446, Defendants are not required to file a removal bond.

14.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446, through their counsel of records, as required by 28 U.S.C. §1446, per the attached Certificate of Service

15.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Gwinnett County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendant WAL-MART STORES EAST, LP, prays that the above- captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division; ; that no further proceedings would be held in the case originally filed in the State Court of Gwinnett County, State of Georgia; and that this Honorable Court would take cognizance of and jurisdiction over this suit as removed, pursuant to 28 U.S.C. §1332.

This 8th day of September, 2023.

WALDON ADELMAN CASTILLA
MCNAMARA & PROUT

/s/ Steven R. Wilson

Steven R. Wilson
(Georgia Bar No. 614233)
Carolyn L. Lee
(Georgia Bar No. 772008)
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LP*

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing pleading with the Clerk of the Court using an O.C.G.A. § 15-6-11 electronic filing service provider which will automatically send e-mail notification of such filing to the following attorney(s) of record:

Robert L. Jenkins, Esq.
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Atlanta, GA 30303
rjenkins@kpattorney.com
Attorney for Plaintiff

This 8th day of September, 2023.

WALDON ADELMAN CASTILLA
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/s/ Steven R. Wilson

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5.1 CERTIFICATE OF COMPLIANCE

I hereby certify that this document was prepared in Times New Roman font, 14-point and complies with Local Rules 5.1(C), NDGa.

This 8th day of September, 2023.

WALDON ADELMAN CASTILLA
MCNAMARA & PROUT

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Suite 200
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rjenkins@kpattorney.com
Attorney for Plaintiff

This 8th day of September, 2023.

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/s/ Steven R. Wilson

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